



Texas Department of Health

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October 28, 2002

PROPOSED REVISIONS TO ADVISORY COMMITTEE RULES (§61.12. KIDNEY HEALTH CARE ADVISORY COMMITTEE)

Beginning in July 2002, the Kidney Health Care Advisory Committee underwent a review by the Office of the Board of Health, on behalf of the Texas Board of Health. The review was conducted as provided in the Texas Administrative Code, Title 25, §61.12(e), in order to “determine whether the committee should be continued, consolidated, with another committee, or abolished.”

The Office of the Board of Health has completed the review and has recommended that the KHC Advisory Committee continue in existence until March 1, 2008. As part of the review process, the rules governing the Advisory Committee are being revised. The revisions reflect recent changes in Board of Health policy, the date of the next scheduled review of the Committee, and new language regarding activities of advisory committee members.

The proposed rules were presented to the Board of Health on October 18, 2002, and were approved for publication in the *Texas Register* for a 30-day comment period. If you have any comments on these proposed rules, please submit them directly to:

Ms. Jacquelyn McDonald, Director
Office of the Board of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

^Title 25. Health Services
Part 1. Texas Department Of Health
Chapter 61. Chronic Diseases
Subchapter A . Kidney Health Care Program
Amendment §61.12

Proposed Preamble

The Texas Department of Health (department) proposes an amendment to §61.12 concerning the Kidney Health Care Advisory Committee (committee). The committee has provided advice to the Texas Board of Health (board) and the department in the area of end-stage renal disease (ESRD) and on current state-of-the-art treatment modalities, medication therapies, and prioritization of the needs of ESRD patients in Texas. The committee is established under the Health and Safety Code, §11.016, which allows the board to establish advisory committees and Health and Safety Code, §85.066, which allows the board to appoint an advisory committee to assist in the development of procedures and guidelines required by the Kidney Health Care Program. The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §61.12 and has determined that reasons for adopting the section continue to exist; however, changes were necessary as described in this preamble.

The department published a Notice of Intention to Review §61.12 in the *Texas Register* on January 7, 2000 (25 TexReg 218). No comments were received due to publication of this notice.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose of the committee, describe the tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1997, the board established a rule relating to the Kidney Health Care Advisory Committee. The rule states that the committee will automatically be abolished on March 1, 2003. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until March 1, 2008.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to: continue the committee until March 1, 2008; include additional requirements regarding statements by members; and clarify the components that the committee must include in an annual report to the board.

Jacquelyn McDonald, Director of the Office of the Board of Health, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state and local government as a result of amending the section as proposed.

Ms. McDonald has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of amending the section will be to provide a continuance of the committee and continued advice to the department on this important issue. There will be no costs to small business or micro-business resulting from compliance with this section, as this section addresses only continuance of the committee and terms of office. There are no anticipated economic costs to persons who are required to comply with the section proposed. There is no anticipated impact on local employment.

Comments may be submitted to Jacquelyn McDonald, Director, Office of the Board of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512-458-7484. Comments on the proposed section will be accepted for 30 days following publication in the Texas Register.

The amendment is proposed under Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner; §85.066 which allows the board to appoint the committee; and Government Code, §2110.005 which requires the department to adopt rules stating the purpose and tasks of its advisory committees.

The amendment affects the Health and Safety Code, Chapters 11 and 85, and the Government Code, Chapter 2110, and implements Government Code, §2001.039.

Legend: (Proposed amendment)

Single Underline = Proposed new language

[Bold Print and brackets] = Current language proposed for deletion

Regular Print = Current language

(No change) = No changes are being considered for the designated subdivision

§61.12. Kidney Health Care Advisory Committee.

(a)-(d) (No change.)

(e) Committee abolished. By March 1, 2008 **[2003]**, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of the committee shall include three consumer representatives and six nonconsumer representatives.

(1) (No change.)

[(2) Since the composition of the committee as it existed on December 31, 1998, is changed under this section, existing members shall continue to serve until the board appoints members under the new composition.]

(g) (No change.)

(h) Officers. The committee **[chairman of the board]** shall select from its members the **[appoint a]** presiding officer and an assistant presiding officer to begin serving on March 1 of each odd-numbered year.

(1) Each officer shall serve until February 27th of each odd-numbered year. Each officer may holdover until his or her replacement is elected **[appointed by the chairman of the board]**.

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will **[serve until a successor is appointed to]** complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled **[temporarily]** by vote of the committee **[until a successor is appointed by the chairman of the board]**.

§61.12

(5)-(6) (No change.)

[(7) The presiding officer and assistant presiding officer serving on January 1, 1999, will continue to serve until the chairman of the board appoints their successors.]

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1)-(4) (No change.)

(5) A **[simple majority of the members of the committee shall constitute a]** quorum for the purpose of transacting official business is five members.

(6)-(7) (No change.)

(j)-(m) (No change.)

(n) Statement by members.

(1)-(2) (No change.)

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) (No change.)

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities and the source of funds used to support the committee's activities.

(3) (No change.)

(p) (No change.)